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OCTOBER TERM 1958

No. 331

CHARLES T. PROUTY, GENEVIEVE PROUTY GAGE, JOHN A. PROUTY, ELSINORE PROUTY MALLORY AND THIRD NATIONAL BANK AND TRUST CO.,

Petitioners,

vs.

CITIZENS UTILITIES COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF CITIZENS UTILITIES COMPANY IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF CITIZENS UTILITIES COMPANY IN OPPOSITION

Citizens Utilities Company files this Brief in opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

OPINION BELOW

The Opinion of the Court of Appeals is not yet officially reported. It is set forth in the Appendix to the Petition, pages 28-31 and at R. 51a-54a.

JURISDICTION

On July 3, 1958, the Court of Appeals for the Second Circuit (Swan, Hincks and Moore, Circuit Judges) unani-

mously reversed (R. 51a-54a) a final judgment in favor of Petitioners made in the United States District Court for the District of Vermont (Ernest W. Gibson, District Judge) (R. 33a-48a). Petitioners' motion in the Court of Appeals to stay issuance of its mandate to the District Court was denied.

The Petition herein distills to a plain attempt to obtain a second general, appellate review of the case. Analysis of the Petition demonstrates the utter lack of any of the substantive considerations required by the Rules of this Court to justify the grant of a writ herein. Rule 19, Supreme Court Rules.

QUESTIONS PRESENTED

Where an *in rem* proceeding to condemn lands has been commenced before a State Tribunal, whether Respondents therein (Petitioners here) may thereafter (a) maintain an action in the United States District Court for an original determination by that Court that the State Tribunal lacks jurisdiction of the pending condemnation proceeding and (b) based thereupon, obtain a judgment in the District Court effectively enjoining further proceedings in the State condemnation proceeding by compelling Respondent to accept and pay for a deed to the lands sought to be condemned.

STATUTES INVOLVED

The Petition omits reference to constructive service provisions of the Vermont Statutes, applicable to actions affecting title to real property located within the state, which establish that Petitioners' action in the District Court was at least *quasi in rem*. (Vermont Statutes, Revision of 1947, Sections 2130-2138, App. A., *infra*, pp. 1a-2a.)

Section 2283 of Title 28, U. S. C., is set forth in Appendix A, *infra*, p. 2a.

STATEMENT

On October 1, 1955, Respondent and Petitioners were parties by succession to a contract of lease of certain lands belonging to Petitioners located in the State of Vermont (R. 5a). The contract provided that within six months of October 1, 1955, Respondent would purchase, and Petitioners would sell, the property at a price satisfactory to the parties. If no voluntary agreement was reached, Respondent was obligated within the six month period to

> "institute proceedings to acquire the property * * * by condemnation * * * before the tribunal then having jurisdiction of such proceedings." (R. 21a)

If Respondent did not acquire the property by either of the two methods described, it was required to pay $300,000 therefor (R. 21a-22a).

The parties failed to agree on a price for the property (R. 6a). On March 27, 1956, admittedly within the stipulated six month period, Respondent initiated a conventional condemnation proceeding before the Vermont Public Service Commission (R. 9a, 49a), the tribunal invested by Vermont Law with jurisdiction in the premises. Sections 9331-9333, Vermont Statutes, Revision of 1947 (R. 49a-50a).

Almost two months after Respondent began its condemnation proceedings, Petitioners commenced this action in the District Court (R. 1a).

The Complaint prayed judgment of specific performance of the agreement to compel Respondent to accept a deed to the property and to pay Petitioners the sum of $300,000 therefor (R. 10a). It also prayed that "an appropriate injunction order" issue out of the District Court

> "restraining the defendant from asserting that the Honorable Public Service Commission of the State of Vermont has jurisdiction of the petition for con-

> demnation brought by the defendant against the plaintiffs, and further restraining the defendant from the prosecution of said petition before the Vermont Public Service Commission during the pendency of these proceedings * * *" (R. 10a-11a).

The material allegations of the Complaint claimed by Petitioners to justify the relief sought therein, were (R. 6a-10a):

"That the lands in question were located along the Clyde River in the State of Vermont; that such river was a "navigable" river within the meaning of the Federal Power Act; that Respondent had not applied for nor obtained a license from the Federal Power Commission for its facilities located along that River; that Respondent had not filed with the Federal Power Commission any declaration of intention to construct facilities located along the Clyde River; that by reason of the foregoing the Public Service Commission of the State of Vermont was, is, and in the future would be without jurisdiction or authority to adjudicate Respondent's Petition for condemnation because a license under the Federal Power Act is an indispensable condition and prerequisite

> "for the institution of eminent domain proceedings or condemnation proceedings before the Public Service Commission of Vermont or any other tribunal for purpose of acquiring the plaintiffs' said lands and real estate . . ." (R. 10a)

Respondent's Answer (12a-18a) set forth denials and also interposed affirmative defenses which were made the grounds of motions to dismiss in the District Court (R. 25a-32a).

Respondent's motions were denied (R. 34a, 42a-47a). An advisory jury returned a verdict of "navigability" which was accepted by the District Judge (R. 34a, 40a). The

District Judge issued a written Decision and Judgment Order which overruled all of Respondent's objections; adjudicated, as a matter of first instance, the "navigability" of the Clyde River; upheld the Court's right to pass upon Petitioners' objections to the jurisdiction of the Vermont Public Service Commission; and on the basis of the foregoing, determined that the Vermont Public Service Commission lacked jurisdiction over Respondent's Petition for condemnation and decreed specific performance in favor of Petitioners (R. 33a-48a).

The Court of Appeals based its reversal on three distinct grounds (R. 51a-54a). It held that the District Court's decree was barred by application of the rule of comity as between Federal and State courts (R. 53a-54a). Second, while the requested injunction had not been granted by the District Court, the Court of Appeals, holding that the District Court's decree was as effective an interference with the Vermont Public Service Commission proceeding as if such injunction had been granted, concluded that the District Court was barred from granting such relief under the provisions of Section 2283, Title 28, U. S. C. (R. 54a). Finally, the Court of Appeals held that the District Court erred in assuming to pass upon Petitioners' objections to the jurisdiction of the Vermont Public Service Commission since Petitioners' objections to that jurisdiction could and should have been presented for ruling (as indeed they were), to the Vermont Commission in the first instance subject to Petitioners' rights of appeal from any decision therein (R. 54a).

The Court of Appeals deemed it unnecessary to review other challenged findings which, together with the specific grounds upon which the reversal rested, were indispensable to the District Court's decree (R. 53a).

ARGUMENT

1. The Court of Appeals Correctly Held That Comity Precluded Petitioners From Maintaining Their Action In The United States District Court

The Court of Appeals held: (R. 53a-54a)

> "Necessary to the harmonious cooperation of federal and state tribunals is the well recognized rule that the court first assuming jurisdiction over property may maintain and exercise its jurisdiction to the exclusion of the other. The petition for condemnation was a suit *in rem*, where the state tribunal must control the property to give effect to its jurisdiction. Obviously, the federal court could not decree specific performance of defendant's contract to buy the land without violating the above mentioned principle of cooperation between state and federal tribunals."*

The determination of the Court of Appeals was correct.

Petitioners, in their effort to create an issue appropriate for this Court's consideration, argue strenuously that the Court of Appeals' application of the rule of comity to this case is at variance with decisions of this Court. Among other cases, Petitioners cite *Commonwealth Trust Co. v. Bradford*, 297 U. S. 613 (1935), *Kline v. Burke Construction Co.*, 260 U. S. 226 (1922) and *Waterman v. Canal-Louisiana Bank Co.*, 215 U. S. 33 (1909). (Petition, pp. 5, 6, 7, 9, 11).

An examination of each of these cases demonstrates that far from controverting the principle relied on by the Court of Appeals, each of them contains the validity of that principle and its applicability here.

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*Citing *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 477; *Princess Lida of Thurn & Taxis v. Thompson*, 305 U. S. 456, 466; *Markham v. Cabell*, 326 U. S. 404, 408; *Penn General Casualty Co. v. Pennsylvania ex rel. Schnader*, 294 U. S. 189, 195; *Moore v. Mitchell*, 30 F. 2d 600, 602, aff'd 281 U. S. 18, 21; *Clarke v. McDade*, 165 U. S. 168, 175; *Harkness v. Hyde*, 98 U. S. 476, 479; *Taylor v. Carryl*, 20 How. 583, 595; *Fisher v. Perkins*, 318 U. S. 47, 48 and *United States v. 625.91 Acres Of Land, etc.*, (D. C. Mo.), 40 F. Supp. 997, 1000.

In *Kline*, this Court held that the two actions under consideration did not involve *res*. The Court said, at p. 229:

> "* * * Where the action is in rem the effect is to draw to the federal court the possession or control, actual or potential, of the res, and the exercise by the state court of jurisdiction over the same res necessarily impairs, and may defeat, the jurisdiction of the federal court already attached. The converse of the rule is equally true, that where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's jurisdiction."

In *Waterman*, this Court similarly acknowledged the rationale of the rule. Finally, in *Commonwealth Trust Co.*, the case was decided on the express finding that the second suit did not seek to interfere with the *res* of the first action. 297 U. S. 613 at pp. 618, 619.

Petitioners raise two further arguments in opposition to this holding. First, Petitioners say that the proceeding before the Virginia Public Service Commission was simply one to fix a price for the property (Petition, pp. 3, 4, 11, 13 *et seq.*). The latter, according to Petitioners, it was not really *in rem*. This contention, made for the first time herein, is untenable.

The condemnation Petition filed by Respondent in the State Tribunal contained a Prayer (App. B, *infra*, p. 3a.) in the conventional form seeking (1) a determination in accordance with provisions of law of Respondent's *entitlement* to condemn, thereafter (2) a determination of compensation and (3) a ruling as to the time and manner of payment thereof (R. 9a, 13a, 14a, 15a, 16a, 40a). Clearly, Petitioners are in error in their attempt to circumscribe the otherwise plain purpose of the condemnation proceeding.

The agreement between the parties also demonstrates the error of Petitioners' argument. That agreement provides that Respondent was to initiate proceedings "to *acquire* the property * * * by condemnation" (emphasis supplied) (R. 21a). It is meaningless for Petitioners to argue that Respondent's "possession" under the agreement eliminated the need for condemnation (Petition, pp. 3, 11, 13 *et seq.*). Respondent's eminent domain proceeding was to acquire *title* to the lands.

In reality, Petitioners' improvised argument now would characterize Respondent's proceedings before the State Tribunal as nothing more nor less than a private arbitration. That characterization is wholly without support; it is at variance with the express allegations of Petitioners' own Complaint, wherein they asserted that Respondent had undertaken to "*acquire* said lands * * * by condemnation proceedings" (emphasis supplied) (R. 9a).

The second argument advanced by Petitioners is that even if the proceeding in the State Tribunal was *in rem*, the action instituted by them in the District Court was *in personam* only (Petition, p. 13). Notwithstanding the content of Prayer of their Complaint (R. 10a), the form of the District Court's Judgment (R. 47a), and the Prayer of the Condemnation Petition (App. B, *infra*, p. 3a) Petitioners say that "the question of whether or not the respondent should acquire title to the Petitioner's (sic) property is not an issue." (Petition, p. 15). Therefore, Petitioners claim that their action is not barred by the rule of comity.

The imperfections inhering in use of the label "*in personam*" have been commented upon. *City of Fresno v. Edmonston*, 131 F. Supp. 421, 424 (D. C. Calif. 1955). In this case, the glib use of that label is altogether misleading. Control over the property was indispensable to the condemnation proceeding in the State Tribunal. *United*

States v. 625.91 Acres etc., supra, and that control attached at the time of commencement of the State proceeding. *Princess Lida, etc. v. Thompson, supra*, at p. 446.

The action instituted by Petitioners plainly sought to, and did, interfere with the State Tribunal's control over the property in question. Petitioners' Complaint specifically sought a decree requiring Respondent to take title to the property (R. 10a). Had the decree of the District Court been carried out, title to the property would have passed to Respondent, and the State Tribunal would have been without any *res* upon which its orders could operate. As is plainly indicated by the Opinion of the Court of Appeals, there could not be a more effective interference with the State Tribunal's control over the lands sought to be condemned therein (R. 54a).

The Vermont Statutes, which specifically provide for constructive service of process upon non-residents in actions including those for specific performance of contracts to purchase real property in the State, are further confirmation that Petitioners' action in the District Court is at the least *quasi in rem* (Sections 2136-2138, Vermont Statutes, Revision of 1947, App. A, *infra*, pp. 1a-2a).

By any test, evolved either from the pleadings or the decree in the District Court, Petitioners' action could not be maintained in consonance with the rules of comity. The Court of Appeal's determination on this point was clearly correct.

2. The Court Of Appeals Correctly Held That The District Court Could Not Enjoin The Condemnation Proceeding Pending In The State Tribunal

Although the Complaint prayed for an injunction to restrain further prosecution of the Vermont condemnation proceeding, that injunction was not granted (R. 47a). Nevertheless, the Court of Appeals stated: (R. 54a).

> "Although the district court did not grant the requested injunction against prosecution of the condemnation petition, its decree was as effective an interference with that proceeding as an injunction would have been. The granting of such an injunction is prohibited by 28 U. S. C. A. § 2283. See *National Quarries Co.* v. *Detroit T. & I. R. Co.* 6 Cir., 10 F. 2d 139, 140. There a bill in the federal court to enjoin the defendant's prosecution of a state suit to condemn land was dismissed."

Petitioners recognize that the correctness of this holding furnishes separate grounds for denial of their Petition (Petition, p. 10). They advance two arguments in reply.

First, Petitioners argue that by some unspecified legerdemain, the proscriptions of Section 2283 of Title 28, U. S. C. are inapplicable to this case and that *National Quarries*, cited by the Court of Appeals, is no longer effective in view of amendments to Section 2283 (Petition, p. 10). The argument is plainly without merit.

There have been at least two cases, decided after the amendment of Section 2283, both involving state condemnation proceedings, which have reached exactly the same result. *Collins* v. *Laclede Gas Company*, 237 F. 2d 633 (8th Cir. 1956), cert. den. 352 U. S. 1025, app. dism. 353 U. S. 919; *Evans* v. *St. Louis Housing Authority*, 226 F. 2d 750 (8th Cir. 1955), cert. den. 350 U. S. 993. No case has been found which has even suggested a contrary result.

The second argument advanced by Petitioners in support of the claimed propriety of the requested injunction rests upon the assertion that the Vermont Public Service Commission, for purposes of Respondent's condemnation proceeding, is not a "court" within the meaning of Section 2283 (Petition, pp. 15-17). This contention is entirely without substance. *Prentis* v. *Atlantic Coast Line*, 211 U. S. 210, 226 (1908).

This Court has held that this "question depends not upon the character of the body, but upon the character of the proceeding." *Prentis* v. *Atlantic Coast Line, supra*, at p. 226. Petitioners do not even attempt to argue that the Vermont Public Service Commission does not exercise a *judicial* function in its jurisdiction over condemnation proceedings. Plainly, even the Vermont cases cited by Petitioners (Petition, pp. 15-16), establish that the Commission acts in a judicial capacity in such matters.

In *Collins* v. *Laclede Gas Company, supra*, the condemnation proceeding sought to be enjoined by the District Court was one which was pending before the Missouri Public Service Commission. The Court of Appeals characterized that Commission as follows (237 F. 2d 633, at 634):

> "Defendant Missouri Public Service Commission is a state administrative board or commission authorized to determine the rights of gas storage companies to exercise the power of eminent domain."

The Court of Appeals, in approving the District Court's findings, agree (237 F.2d 633, at 635):

> "'1. That the necessary effect of granting the relief sought in the complaint herein will be to stay proceedings *in a state court*.'" (Emphasis supplied)

The Court of Appeals application of the clear proscription of Section 2283, Title 28, U. S. C. was correct. Petitioners' arguments present no question of substance for review by this Court.

3. The Court Of Appeals Was Correct In Holding That The District Court Should Not Have Passed Upon Petitioners' Objections To The State Tribunal's Jurisdiction.

Respondent argued in the District Court that any objections which Petitioners had to the jurisdiction of the

State Tribunal should have been presented by Petitioners to that tribunal and adjudicated therein (R. 18a, 25a-26a). In fact, such objections were interposed by Petitioners before the Public Service Commission. Essentially, they were the same as the substantive allegations of Petitioners' Complaint. The Court of Appeals said: (R. 54a)

> "Any objection which the plaintiffs wished to make to jurisdiction of the state tribunal could have been as effectively urged before it as in the federal court, and its decision could have been reviewed as provided in the Vermont statutes, and ultimately, if a federal question were involved, by the Supreme Court of the United States. We think the court below erred in holding that the Public Service Commission lacked jurisdiction. That was an issue for that tribunal to decide for itself subject to review as above stated."

If the District Court had not held that the State Tribunal was without jurisdiction, Petitioners could not have obtained their decree (R. 46a-47a). That finding was indispensable to the District Court's determination. As such, the correctness of the Court of Appeals' Opinion on this point provided another separate and distinct ground for reversal of the District Court's decree.

Petitioners' attempt to circumvent the determination of jurisdictional objections by the tribunal in which the proceeding was pending was improper. *Baber* v. *Texas Utilities Co.*, 228 F. 2d 665 (5th Cir. 1956); aff'g. 128 F. Supp. 753; *Federal Power Commission* v. *Colorado Interstate Gas Co.*, 348 U. S. 492 (1955); *United States* v. *Western Pacific R. Co.*, 353 U. S. 359 (1956); *Carson* v. *Board of Education*, 227 F. 2d 789 (4th Cir. 1955); *West* v. *Bank of Commerce & Trusts*, 167 F. 2d 664 (4th Cir. 1948). See also *Cook* v. *Davis*, 178 F. 2d 595 (5th Cir. 1949) cert. den. 340 U. S. 811; *Texas Co.* v. *Montgomery*, 73 F. Supp. 527 (D. C. La. 1947) aff'd. 332 U. S. 827.

4. Additional Findings Of The District Court, Which Were Indispensable To Its Decree, Were Erroneous And Would Preclude The Grant Of Any Relief To Petitioners

The Court of Appeals based its reversal on the issues considered in Points 1-3 above (R. 53a). The Court held it unnecessary to consider the correctness of certain additional findings made by the District Court. These were:

1. That the Clyde River was "navigable" within the meaning of the Federal Power Act (R. 40a);

2. That Respondent's failure to obtain a license from the Federal Power Commission constituted a violation of the Federal Power Act and thereby barred Respondent from resort to otherwise available state condemnation procedures (R. 41a, 46a-47a); and

3. That Petitioners had standing under the Federal Power Act to raise questions of compliance therewith in private litigation (R. 42a-43a).

The District Court determined all of these issues, over Respondent's objections, in favor of Petitioners.

a. The District Court Was Without Jurisdiction To Make An Original Determination Of "Navigability" Under The Federal Power Act.

The Federal Power Commission had not at the time of Decision in the District Court made any determination of "navigability" of the Clyde River. Admittedly, the District Court's determination of that issue was a determination of first instance. It was indispensable to the District Court's decree. According to the theory of the Complaint and the District Court's Decision, without a finding of "naviga-

bility" there could be no basis for any interference with the Public Service Commission.

The District Court plainly did not have jurisdiction to make an original determination of "navigability" under the Federal Power Act. That determination violated the doctrine of primary administrative jurisdiction. *United States* v. *Western Pacific R. Co.*, *supra*; *Interstate Natural Gas Co.* v. *Southern California Gas Co.*, 102 F. Supp. 685 (D. C. Calif. 1952), followed by *Interstate Natural Gas Co.* v. *Southern California Gas Co.*, 103 F. Supp. 317 (D. C. California 1952) aff'd. 209 F. 2d 380 (9th Cir. 1953); *Federal Power Commission* v. *Arkansas Power & Light Co.*, 330 U. S. 802 (1946); *Michigan Consol. Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784 (6th Cir. 1946).

b. Licensing Under The Federal Power Act Is Not A Prerequisite To Resort To State Condemnation Procedures

Even if it be assumed, *arguendo*, that the District Court could make an original determination of "navigability" and could determine that Respondent should have been licensed under the Federal Power Act, nevertheless those findings could not justify a holding that Respondent was debarred from resort to state condemnation procedures.

The Eminent Domain provision of the Federal Power Act (Title 16, U. S. C., Section 814), was intended to be supplementary to existing state procedures and in no way restrictive thereupon. *Oakland Club* v. *South Carolina Public Service Authority*, 110 F. 2d 84 (4th Cir. 1940); *Harris* v. *Central Nebraska Public Power & Irrigation District*, 29 F. Supp. 425 (D. C. Neb. 1938).

Particularly in view of the District Court's concession of the novelty of the point (R. 40a), and the complete absence of any authority, statutory or otherwise, to oust the State Tribunal of its otherwise plain jurisdiction (R. 49a-

50a), there simply was no basis for the District Court's holding.

c. Petitioners Had No Standing In The District Court To Raise And Litigate Questions Involving Determinations Committed To The Competence Of The Federal Power Commission.

Respondent argued before the District Court that Petitioners, as private litigants, could not properly raise for determination the question of "navigability" and the question of Respondent's alleged non-compliance with the Federal Power Act (R. 17a-18a). The District Court rejected this argument (R. 42a). In so doing, it erred. *Amalgamated Clothing Workers of America* v. *Richman Brothers Co.*, 348 U. S. 511 (1955); *Johnson* v. *Chesapeake & Ohio Railway Company*, 188 F. 2d 458 (4th Cir. 1951), cert. den. 342 U. S. 843; *Meyercheck* v. *Givens*, 180 F. 2d 221 (7th Cir. 1950); *Conter* v. *South Carolina Public Service Authority*, 91 F. Supp. 262 (D. C. S. C. 1950).

CONCLUSION

The Decision of the Court of Appeals remits Petitioners to the State Tribunal for the determination of their objections to that body's jurisdiction. That decision was clearly correct and poses no question, substantial or otherwise, for review by this Court.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

Sections 2136, 2137 and 2138 of the Vermont Statutes, Revision of 1947, provide:

"2136. *Delivery of copy.* When an action is commenced at law or in equity, an absent defendant, residing or being without the state so that process cannot be served on him, may be notified of the pendency of such action and given opportunity to make defense therein, by the delivery to him personally, at any place within or without the state, of copies of the process and pleading, and of an order for such delivery, stating the time and place when and where he is required to appear, all under the hand of the clerk or a magistrate of the court wherein the action is pending. County clerks may issue such orders and certify such copies in or out of term time, and before and after the entry of such action in court."

"2137. *Service within or without the state.* When such delivery is to be made without the state, the order may provide that delivery of such copies shall be made by any sheriff, deputy sheriff, constable, notary public or attorney at law, not a party or related to either party, without special designation by name, and the proof of delivery thereof shall be by affidavit, stating the time and place of delivery, the age of the deponent, or that he is above twenty-one years of age, his occupation and the reason why he knew the person to whom the copies were delivered to be the person mentioned therein as a party. If delivery is to be made within the state, it shall be made in the manner herein provided for delivery without the state, except that the order for delivery may be directed only to any sheriff or constable in the state."

"2138. *Effect of notice.* Upon such notice so given to a party at least twenty-one days before the time when he is required to appear, the same pro-

ceedings may be had, so far as to effect the title or right to the possession of goods, chattels, rights, credits, land, tenements or hereditaments in the state, as if such process or pleading had been served on a party in the state before entry."

Section 2283 of Title 28, U. S. C., provides as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

APPENDIX B

The Prayer of Respondent's Petition for condemnation in the Vermont Public Service Commission is as follows:

> "WHEREFORE, petitioner prays that an Order be made by the Commission entitling the Petitioner to condemn said property and interests therein as above described; that the Commission fix a time and place for hearing hereon; that the Commission issue its citation to each of the petitionees, as provided by law, directing them and each of them, to appear herein and show cause, if any they or any of them may have, why such Order should not be made herein; that upon hearing in this cause, the Commission assess and determine the compensation to be paid for such property and interests therein and determine the time and manner of payment to be made by the petitioner to the petitionees, and for such further Order, direction or determination herein as shall be provided by law and to the Commission shall seem meet."